

STATE OF MICHIGAN
COURT OF APPEALS

BRUCE P. McCRAY,

Plaintiff-Appellant,

v

JANET R. McCRAY,

Defendant-Appellee.

UNPUBLISHED

December 28, 2001

No. 224603

Missaukee Circuit Court

LC No. 98-003963-DO

Before: Meter, P.J., and Jansen and R. D. Gotham*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the parties' judgment of divorce. He contends that the judgment does not accurately reflect the parties' agreement on the record regarding the disposition of certain items of personal property. We disagree and affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties were married in 1959 and plaintiff filed his complaint for divorce on June 2, 1998. The couple bought and sold antiques and they had a sizable number of antiques and collectibles that they used both personally and as the inventory of an antiques and collectibles business. On August 20, 1999, they placed a stipulated property settlement on the record that, as articulated by plaintiff's attorney, provided that:

the barn is filled with antiques that both parties are to split equally, not in value, but by item. They will go through it and they will decide one at a time who wants what and who wants the other. Inclusive in that are also antiques that are located inside the home that Mr. McCray will make available to Mrs. McCray to inspect, and also Mrs. McCray has some antiques currently in her possession that will be returned to the barn as well as some stained glass items.

Defendant's attorney subsequently submitted a proposed judgment of divorce that, with regard to the antiques, provided for the item-by-item division of "each and every antique and/or collectible item currently in the possession or control of Plaintiff and Defendant."

Plaintiff filed three sets of objections to the proposed judgment. His last objection was that the parties agreed to divide only the antiques, and not the collectibles, in the barn and the

* Circuit judge, sitting on the Court of Appeals by assignment.

parties' residences, and that he was entitled to the collectibles under a provision in the parties' property settlement that he would receive all residual property not covered by the settlement. The trial judge rejected plaintiff's claim. He reasoned that, based on their earlier pleadings, the parties understood that the division encompassed both antiques and collectibles and added that, "for the purposes of this hearing, [I] order and determine that antiques and collectables are all included as far as the parties are concerned as antiques and that they will be divided equally between the parties."

On appeal, plaintiff contends that the judgment of divorce does not correctly reflect the agreement the parties reached on the record because it requires the division of collectibles as well as antiques. Property divisions reached by the consent of the parties and finalized in writing or on the record may not be modified by a court. *Quade v Quade*, 238 Mich App 222, 226; 604 NW2d 778 (1999); *Bers v Bers*, 161 Mich App 457, 463-464; 411 NW2d 732 (1987). The court is required to uphold such settlements and cannot set them aside absent fraud, duress, or mutual mistake. *Quade, supra* at 226. However, a court can clarify ambiguous language provided it does not change the substantive rights of the parties. *Bers, supra* at 464. The trial court's interpretation of an ambiguity in the property settlement is reviewed for clear error. *Id.*

Here, the trial court did not clearly err in determining that the parties intended the term "antiques," as used by the parties in their settlement agreement, to include collectibles. The stipulated settlement involved the parties' barn "filled with antiques" and provided that they were to be split equally. From this language, it is apparent that the parties envisioned the division of all items in the barn. Plaintiff indicated that there were very few true antiques in the barn, and the balance of the items consisted of collectibles. This makes it apparent that the parties used the term "antiques" in their settlement to describe both antiques and collectibles inside the barn. The trial court did not err in so interpreting the property settlement.

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Roy D. Gotham